BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD OF THE STATE OF MONTANA

In the matter of the amendment and)	NOTICE OF PUBLIC HEARING ON
transfer of ARM 2.43.427 pertaining)	PROPOSED AMENDMENT AND
to reinstatement credit for lost time)	TRANSFER

TO: All Concerned Persons

- 1. On October 3, 2008, at 9:00 a.m., the Montana Public Employees' Retirement Board will hold a public hearing in the board room at 100 North Park Avenue, Suite 200, Helena, Montana, to consider the proposed amendment and transfer of the above-stated rule.
- 2. The Montana Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Administration, no later than 12:00 p.m. on September 26, 2008, to advise us of the nature of the accommodation that you need. Please contact Angela Salvitti, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail asalvitti@mt.gov.
- 3. The rule as proposed to be amended and transferred provides as follows, new matter underlined, deleted matter interlined:
- 2.43.427 (2.43.2120) REINSTATEMENT -- CREDIT FOR LOST TIME (1) A An inactive member whose service is was involuntarily terminated and who is later reinstated returned to employment as the result of a suit, court order, appeal arbitration, or out-of-court settlement, to which the board is a party, may petition the board for membership service years and credits service credit to be granted for the period of time lost, provided the member is awarded retroactive compensation in settlement as a result of his the claim. Lump-sum awards not considered compensation under state and federal tax laws will not be considered compensation for the purposes of this rule.
- (2) An involuntarily terminated member who retires prior to being returned to employment as the result of a suit, court order, arbitration, or out-of-court settlement and who is awarded retroactive compensation as a result of the claim may petition the board for membership service and service credit to be granted for the period of time lost, provided the member repays all retirement benefits, plus the actuarially-assumed rate of interest.
- (2) The board will review among all relevant considerations, documentation provided by the member and will determine the appropriateness of granting service credits and membership service, and the amount of employee and employer contributions which must be paid to the retirement fund based upon the compensation awarded under (1) above and will credit proportional service time to

the member after all required contributions, including interest, have been paid.

- (3) In order to receive full membership service and service credit, employee and employer contributions must be paid by the employer on the gross compensation the member would have received, including any interim earnings. Proportional service credit will be granted if employee and employer contributions are paid on a lesser amount of compensation. Any statutorily-required state contributions must also be received.
- (4) Lump-sum awards not considered compensation under state and federal tax laws will not be considered compensation for the purposes of this rule.

AUTH: 19-2-403, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA

IMP: Title 19, Ch. 3, part 3, Ch. 5, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4 19-2-303(47), MCA

STATEMENT OF REASONABLE NECESSITY: Current language in (1) is not clear regarding whether a member must be reinstated to employment in order to purchase the lost time. The board has determined that a member must actually return to employment in order to purchase the lost time as service credit. Otherwise, a member who merely receives damages for his or her termination but who does not return to work would be purchasing time for which no work could be considered to have been performed. The proposed changes clarify the requirement that the member must return to work.

Arbitration is proposed to be added to the list of possible proceedings as most collective bargaining agreements require termination matters to be arbitrated. The board proposes to repeal the language requiring that it be a party to the proceeding as the board is not and should not be a party to a termination proceeding unless the terminated person was a board employee. The purpose of the language is to ensure the board knows of and can administer the terms of the reinstatement and related service purchase. The purpose is being met by board staff reaching out to the employer and labor communities regarding the board's role in these decisions and by the requirement that the member petition the board in order to purchase the service.

Section (2) is needed to establish the process to be followed by members who retire between being terminated and being returned to employment. This is a unique circumstance that is not covered by (1) but which is occurring more frequently as our members age.

If (1) is amended as proposed, the generic language in current (2) will no longer be needed. The amount of contributions and service will be based on the member's actual service. The board proposes that current (2) be repealed and replaced with (3). Section (3) establishes the process to be followed to ensure contributions related to the restored service are picked up by the employer.

Contributions related to membership service and service credit must be "picked-up"

for IRS qualification purposes.

Section (4) provides further clarification that not all termination awards will be considered compensation for retirement system purposes.

This rule is proposed to be transferred as the Public Employees' Retirement Board is completely reorganizing and restructuring its rules. The proposed restructure will better align with the statutes administered by the board and with the services provided by the board. Transfer of this rule, together with the restructuring of all board-administered rules, will enable the Montana Public Employees' Retirement Administration employees, covered employers, and retirement system members to more easily locate rules applicable to their needs and situation.

- 4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Roxanne M. Minnehan, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; fax (406) 444-5428; or e-mail rminnehan@mt.gov, and must be received no later than 5:00 p.m., October 17, 2008.
- 5. Angela Salvitti, Paralegal for the MPERA, has been designated to preside over and conduct this hearing.
- 6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.
- 7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.
 - 8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Melanie Symons

Melanie Symons, Legal Counsel and

Rule Reviewer

/s/ Jay Klawon

Jay Klawon, President

Public Employees' Retirement Board

/s/ Michael P. Manion

Michael P. Manion, Chief Legal Counsel and Rule Reviewer

Certified to the Secretary of State September 2, 2008.